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NEW IDEA SPREADER CO. *v.* R. M. ROGERS & SONS.

Nov. 15, 1917.

[94 S. E. 351.]

1. Pleading (§ 144*)—Set-Off—"Recoupment"—Statute.—In an action against plaintiff's agents for goods sold previous to 1915, a special plea stating a claim against plaintiff, that defendants were willing and offered to set off and allow the same against the money supposed to be due and payable by them, as demanded in the notice to the suit, setting out stipulations in writing, subject to which all orders for goods were given, which showed that each order given by defendants for a year stood alone and formed the basis of a separate contract, and alleging that the contract for the year 1915, broken by plaintiff, was on the same basis and conditions, was one of set-off under Code 1904, § 3298, and not one of recoupment, under section 3299, since the contract out of which defendants' claim arose was separate from those under which the indebtedness sued for arose.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Set-Off; Recoupment.* 12 Va.-W. Va. Enc. Dig. 265, 275.]

2. Pleading (§ 144*)—Plea of Set-Off—Description of Claim.—A special plea, clearly describing defendants' set-off as consisting of loss of profits on sales to unnamed customers, caused by plaintiff's breach of contract to furnish goods as ordered by defendants as exclusive agents, setting forth how and from what cause the loss of profits occurred, sufficiently described the nature of the set-off claimed, as required by Code 1904, § 3298.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 266.]

3. Pleading (§ 319*)—Bill of Particulars—Objections to Plea in Set-Off—Statute.—Plaintiff's remedy to obtain further particulars of defendants' claim was by motion for bill of particulars under Code 1904, § 3249, and not by objection to the special plea.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 376.]

4. Principal and Agent (§ 36*)—Agency to Sell Goods—Repudiation of Contract by Principal—Effect.—The refusal of a firm to fill an order for goods sold by its agents relieved the agents from giving further orders for goods as a condition to their right of action for the firm's breach.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 280.]

5. Contracts (§ 10 (4)*)—Mutuality of Obligation.—Where a firm assured its sales agents that it would continue to sell them goods as exclusive agents in specified territory as in the past, and the agents acted upon such assurances, and made additional efforts to make sales of more of the goods, ordering a carload of them, whereby

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

they bound themselves to pay had the order been filled, there existed a meeting of minds and a mutuality of obligation.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 336.]

6. Set-Off and Counterclaim (§ 35 (1)*)—Unliquidated Claim.—If defendant's claim in set-off is so unliquidated that it cannot be ascertained by computation or calculation from definite data supplied by the evidence, and lies in mere opinion, such claim cannot be set off under Code 1904, § 3298, providing that in a suit for any debt, defendant may set off any debt so described in his plea as to give plaintiff notice of its nature.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 255, 256.]

7. Set-Off and Counterclaim (§ 28 (2)*)—Loss of Profit—Statute.—Where a firm broke its contract with its agents to sell manure spreaders, the agents' loss of profits on the sales of 26 spreaders which they had made before the breach of contract was such damage as could be set off under Code 1904, § 3298, against the firm's claim for the price of spreaders, since the agents' loss could be ascertained by mere computation.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 254.]

8. Set-Off and Counterclaim (§ 28 (2)*)—Set-Off by Agent to Sell Goods—Loss of Profit.—Where agents to sell manure spreaders had incurred expenditures of time and money in advertising and canvassing to make sales, before breach of the principal's contract to sell and deliver such spreaders, the agents were entitled to set off the full amount of profit on each spreader against the principal's claim for the price of those delivered.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 254.]

9. Master and Servant (§ 42 (1)*)—Breach of Contract of Employment—Avoidable Consequences.—Where breach of a contract of employment occurs before the party claiming damages has fully performed, he must minimize his damages by engaging in other employment if he can obtain it.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 212.]

Error to Circuit Court, Augusta County.

Action by the New Idea Spreader Company, a partnership, against R. M. Rogers & Sons, a partnership. To review a judgment for defendants, plaintiffs bring error. Affirmed.

A. C. Gordon and *Jos A. Glasgow*, both of Staunton, for plaintiff in error.

L. Travis White, Timberlake & Nelson, and *Carter Braxton*, all of Staunton, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.